VIRGINIA COMMUNICATIONS, INC.

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June 2, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Filed Electronically via ECFS

Re: GN Docket number 04-163
Request for Comments
Comments of Virginia Communications, Inc.

Dear Ms. Dortch:

Virginia Communications, Inc. ("VCI") hereby submits the following comments, in response to the public solicitation by the Wireless Broadband Access Task Force released May 5, 2004.

Introduction

VCI has been an active FCC licensee for many years, acquiring licenses from the FCC and other parties. In addition to early applications for licenses, VCI was the successful bidder in the MDS BTA auctions, acquiring 15 BTA licenses in Arizona, Iowa, Ohio, Tennessee, Kentucky, Illinois, Pennsylvania, New York and West Virginia. VCI's choice of markets was a function of geography, size, population, topography and the extant or likely penetration of DSL or cable modem services. The service regions have decidedly small-market and rural area profiles. 30% of the BTAs are in the lower third of all BTAs in terms of population. Of the 48 counties comprised by these BTAs, fully two-thirds lie outside the top 1,000 counties nationwide in terms of population, and nearly half rank below the largest 1,500 counties.

VCI operates CommSpeed, the largest and fastest growing Internet Service Provider in its area and one of the largest privately-held providers of high-speed wireless Internet services in the United States. CommSpeed was recently identified by Broadband Wireless Exchange Magazine as the 2nd largest Wireless ISP in the United States. VCI's customer base includes urban and rural residents and businesses, including educational and municipal facilities. The Company has also completed contracts to provide broadband services on Native American reservations. Including payments of over $2M to the FCC for licenses, VCI has invested over $3M to establish its current level of service and continues large monthly investments to expand infrastructure, warranted by a large backlog of new service orders. VCI's CommSpeed operation contributes substantially to the local economy, employing 30 people with an annual payroll of nearly $900,000. Not surprisingly, the FCC has cited VCI's CommSpeed service as illustrative of the Commission's vision of universal access to high-speed broadband capability. In the *Interim Report on 3G*, the Commission lauded VCI for its service.

As VCI continues to develop the first CommSpeed market, it has also invested substantial resources in preparing for timed roll-outs in its other market areas. VCI has already invested hundreds of thousands of dollars in initial planning stages, involving complex network design and engineering, the identification and acquisition of transmit sites and cell locations, zoning approvals and other permits, marketing studies, and the actual preparation and filing of the FCC applications to secure specific channel authorizations for two-way capability, plus equipment and other capital preparations to serve additional markets. In all of these markets, there are extensive urban and rural areas where alternative broadband services are either non-existent or limited in availability. VCI is taking seriously the challenge to bring broadband services to these areas, as has been the Commission's desire.

Specific Comments on Commission's Wireless Broadband Policies

VCI's Experience

Over the past 3 years, VCI has deployed equipment utilizing both licensed and unlicensed spectrum. Our experience has been that, while unlicensed systems have required less advanced preparation compared with the engineering and licensing requirements of licensed systems, we have been able to provide more consistent and reliable service to our customers using licensed systems. This has been due to both interference issues and equipment reliability. It has been our experience that both licensed and unlicensed wireless broadband networks have the capability to provide an alternative facilities-based platform to other broadband services, including cable and DSL. Our CommSpeed wireless services have been able to compete very effectively with both cable and DSL broadband service offerings. In our rural and underserved areas, we have delivered broadband services effectively using licensed systems, less effectively using unlicensed systems.

It is our observation that sufficient spectrum, both licensed and unlicensed, has been allocated for wireless broadband networks in rural, small and medium sized market areas, where we have experience. Our service has prospered along side cable, DSL and competitive wireless networks, with the total effect being a healthy environment wherein broadband services are available to virtually all residents and businesses in the area, at prices which are reasonable and tending downward.

Wireless Broadband Deployment

The Task Force asks the question, "Has the method for access to spectrum affected the development of wireless technologies and the provisioning of wireless broadband services?" VCI believes that the FCC's policies over the past ten years have definitely affected these things, resulting in very slow development of wireless technologies and very little provisioning of wireless broadband services. While there has been much positive action taken in various places by the Commission, the major steps that have been taken in areas of spectrum suitable for broadband wireless are as follows:

The Commission first allowed the licensing of portions of spectrum, notably MMDS and ITFS, spurring some companies to utilize these licenses and develop technology which would lead to broadband services. However, before such technologies were sufficiently developed and while many companies were waiting for this technology and for the Commission to promulgate two-way rules which would enable broadband services, the Commission began auctioning spectrum in all sorts of bands, effectively forcing those who had invested capital, time and effort to buy these licenses to protect their market positions. The result was many companies spending billions of dollars to buy spectrum, instead of investing that money in development of technology. To take the example of just one of the auctions, the MDS BTA auction, two of the largest telecommunications companies in the country bought nearly three-fourths of the available spectrum, then did virtually nothing with it. The auctions for WCS, LMDS and many other frequencies went a similar direction. The weighty burden of these huge investments led to the bankruptcy of most of the companies originally intent on developing broadband services, which has had a chilling effect on the capital markets, making it nearly impossible for those companies that were left to raise money for deployment.

Then, while the survivors searched for capital to develop systems utilizing technology and rules finally available, the Commission began its current campaign of making more and more spectrum available for unlicensed use, spurring the flawed notion that it would be "easy" to launch broadband services with the "free" unlicensed spectrum. The illusion of profitable broadband services without the necessity of investing in licensed spectrum and prudent frequency coordination, has attracted millions of dollars of investment capital which has, once again, been mostly lost on bankrupt companies discovering the hard way how difficult it is to deploy wide area broadband services with unlicensed equipment.

While we admit that much of this history has been aggravated by simply bad business plans, we believe that the Commission has placed unnecessarily heavy emphasis on giving more and more spectrum to the public and should now take a close look at what is necessary to foster truly successful broadband wireless companies. To whatever extent possible, the Commission needs to identify and promulgate policies and rules that will promote investment in broadband wireless companies willing to deploy systems.

Productive and Unproductive Policies

There are predominantly two groups of companies viably contributing to this industry: those utilizing licensed spectrum and deploying services and those utilizing unlicensed spectrum and deploying services.

We believe that there is already sufficient spectrum available to those utilizing unlicensed spectrum and that additional spectrum should only be made available when it is demonstrated that the existing spectrum is fully utilized. Of course, to fully utilize it, users need to coordinate and minimize interference, as the more successful

companies are doing. It is an axiomatic that deployments in unlicensed spectrum will fail without reasonable efforts to coordinate the use of frequencies by multiple users. And yet the Commission cannot establish rules requiring such coordination without turning the spectrum into de-facto licensed spectrum. In the absence of forced coordination, the users of this spectrum tend to take the position that when it becomes difficult to operate, it is easier to ask for more spectrum, than to coordinate multiple users, but this defeats the Commission's original premise of unlicensed spectrum, that is that the cost of buying licensed spectrum is replaced by the burden of coordinated use of unlicensed spectrum. To a large degree, it appears that the pressure the Commission receives to allocate more and more spectrum for unlicensed use is being driven by the companies who profit from the manufacture and sale of equipment for this use.

Since VCI uses primarily licensed spectrum, we have a definite view of the effect of the Commission's seeming obsession with issuing more and more unlicensed spectrum. We believe that this distraction and dilution prolongs and compounds the difficulty in attracting capital to the licensed services. We see this as a problem not simply because we are a licensed company trying to raise capital for our own deployments. We see this as a problem also because we see the most successful deployments of broadband services in rural and underserved areas of the world coming from licensed operations, as opposed to unlicensed. We feel that this fact of life justifies a close look by the Commission and the Task Force into the effects of the current and proposed policies on the deployment of broadband services in the real world.

Sincerely,

Stephen A. Merrill
Vice President